

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PECO PALLET, INC.,)
)
 Plaintiff,) Case No.
)
 vs.) 1:15-cv-06811
)
 NORTHWEST PALLET SUPPLY CO.,)
)
 Defendant.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NORTHWEST PALLET SUPPLY CO.,)
Plaintiff,) Case No.
vs.) 3:15-cv-50182
PECO PALLET, INC.,)
Defendant.)

VIDEOTAPED DEPOSITION

$$\text{OF}$$

DR. JUDD H. MICHAEL

Thursday, April 26, 2018

Reported by:

ELIA E. CARRIÓN, CSR, RPR, CRR

Job No. 21447

1 PECO.

2 Q. Is -- is true value like a recognized
3 accounting concept?

4 A. I'm not sure about that. I think I may
5 have been referring to it as opposed to a market
6 value. So, for example, the market value may be \$5
7 for a block pallet, but the value of that pallet to
8 PECO may be considerably higher.

9 Q. So is the concept of true value something
10 that has been written about or studied in economic
11 or accounting literature? Or is that just something
12 that you've -- a phrase that you came up with on
13 your own?

14 A. I believe in this case, it was our
15 term -- or my term.

16 Q. And have -- have -- have you ever seen
17 anyone in the academic community and peer-reviewed
18 journals talk about the concept of true value
19 before?

20 A. Not that I recall.

21 Q. And what, sir, is your opinion of the
22 true value to PECO of lost pallets and returned
23 pallets?

24 A. I don't have one specific dollar value in

1 have to divide the -- these numbers by 3.5; correct?

2 A. Approximately, which I did in the detail
3 on Section 5 there.

4 Q. So you say each -- each rental to -- to
5 PECO results in the EBITDA or cash flow between
6 [REDACTED]; correct?

7 A. From two different years, yes.

8 Q. So we can agree that for each rental,
9 PECO makes in -- in profit, let's say, approximately
10 [REDACTED]. Are you comfortable with that?

11 A. Yes.

12 Q. And so can you explain to me, sir, how
13 you could -- if your opinion is correct, how PECO
14 could run a business paying someone \$234 to get back
15 something that they made [REDACTED] renting?

16 A. They didn't make only [REDACTED] off the
17 pallet.

18 Q. Well -- well, you just told me you agree
19 that they made [REDACTED] in profit per rental; right?

20 A. But if a pallet is returned to them, they
21 don't rent it just once.

22 Q. But in order to re-rent it, they have to
23 buy it back from you, according to your view of the
24 world, for upwards of \$234 a pallet; correct?

1 Q. Well, I -- you know, I get to ask you
2 hypothetical questions at the -- at the deposition
3 because you're an expert. So my hypothetical for
4 you, Dr. Michael, is: Let's assume that PECO makes
5 [REDACTED] a pallet; let's assume that the Court
6 accepts your opinion in this case that it -- on the
7 highest end possible, \$234 a pallet; and let's say
8 all of PECO's pallets that are rented end up in the
9 hands of Northwest Pallet. Are you with me there?

10 A. Yes.

11 Q. Okay. How -- and -- and North -- and
12 Northwest Pallet charges PECO \$234 to get its pallet
13 back after each rental trip. How long, in my
14 hypothetical, sir, could PECO continue to stay in
15 business, rent -- paying \$234 for something it makes
16 [REDACTED] on profit renting?

17 A. Well --

18 MR. WIX: Object to form.

19 A. -- without running the numbers, I don't
20 know; but not very long.

21 Q. (By Mr. O'Neil) You see the absurdity of
22 the position you've set out in your report on this,
23 in this regard, don't you, sir?

24 A. No.

1 district?

2 A. I don't recall.

3 Q. The 11th Circuit?

4 A. I believe that the court documents that I
5 read mention the 11th Circuit.

6 Q. And what district circuit or -- does the
7 Northern District of Illinois sit in, sir?

8 A. I don't recall.

9 Q. It's not the 11th Circuit, is it?

10 A. Not that I know of.

11 Q. And so have you done any comparative law
12 analysis between the differences between
13 11th Circuit law and -- and 7th Circuit law on
14 the -- on the cause of action of unjust enrichment?

15 A. No.

16 Q. So you are offering an opinion that PECO
17 has been unjustly enrichment by Northwest's
18 services, but you cannot tell me any of the elements
19 of the tort of unjust enrichment under 7th Circuit
20 law; is that correct?

21 A. Correct.

22 Q. And you're -- you're not offering any
23 opinions on the general operation and structure of
24 the pallet industry, are you, sir?

1 A. I believe there were two issues: One,
2 that she had paid them, they were unjustly enriched
3 because they received money and did not provide the
4 services; and No. 2, for the damages to the
5 furniture.

6 Q. And do you remember the names of -- of
7 either the plaintiff or defendant parties in that
8 case?

9 A. Sorry, I don't.

10 Q. And what court was it pending in?

11 A. I don't recall.

12 Q. Well, who was the lawyer that retained
13 you in the case?

14 A. I don't recall.

15 Q. Have you ever taught any classes on
16 economic theory?

17 A. No.

18 Q. Have you ever taught any classes on
19 accounting?

20 A. I've taught courses that include
21 accounting concepts.

22 Q. Have you ever taught any classes on the
23 measurement of damages for unjust enrichment?

24 A. No.

1 Q. Did you study the concept of unjust
2 enrichment in college when you got your degree at
3 Texas A&M?

4 A. Not that I recall.

5 Q. What about when you got your MBA, did you
6 study the concept of unjust enrichment then?

7 A. Not that I recall.

8 Q. What about when you got your Ph.D. in
9 wood products, did you study the concept of unjust
10 enrichment then?

11 A. Not by name.

12 Q. What was your concentration or area of
13 research for your Ph.D.?

14 A. The furniture industry was the industry
15 of focus. The concentration was on the use of
16 trade shows information used by different parties to
17 determine pricing for furniture as well as the
18 impact of design.

19 Q. None of your Ph.D. studies, I presume
20 then, related to the pallet industry though?

21 A. Correct.

22 Q. And none of your Ph.D. studies involved
23 the measurement of damages for unjust enrichment;
24 correct?

1 A. Correct.

2 Q. Your résumé indicates you're a partner in
3 a company called Scientific Management
4 Solutions LLC; correct?

5 A. Yes.

6 Q. And what is SMS, for short?

7 A. It's the partnership between Dr. Ray and
8 I to provide consulting and other services to the
9 forest-based or wood-based industries.

10 Q. And are there any other employees of SMS
11 besides you and Dr. Ray?

12 A. Other than ad hoc employees, no.

13 Q. And you -- are you and Dr. Ray the only
14 equity owners in the business?

15 A. Yeah.

16 Q. And have you ever been retained by a
17 pallet recycler to provide any services other than
18 in this case?

19 A. Yes.

20 Q. Okay. And tell me about that.

21 A. The biggest example would be the CHEP
22 case where there were eight named plaintiffs, and
23 Dr. Ray and I -- and I were retained to represent
24 them.

1 understand quantum. Is that a legal term that I
2 should know?

3 Q. No. No. It's a -- well, let me ask the
4 question a different way.

5 What is the appropriate legal measure
6 of unrest -- unjust enrichment damages under
7 Illinois law, sir?

8 A. I don't know.

9 Q. And so what test did you apply in
10 determining that the damages that -- for -- for
11 unjust enrichment should be between \$2.22 and \$16.93
12 if you do not know what the legal measure of damages
13 for an unjust enrichment claim is under Illinois
14 law?

15 A. I believe I used it as the value of the
16 asset returned to the owner, which is commonly used
17 in unjust enrichment trials.

18 Q. And if the Court in this case determines
19 that the appropriate measure of unjust enrichment
20 damages is the value of the services provided, we
21 would agree -- you would agree with me that your
22 damages opinion would be irrelevant; right, sir?

23 MR. WIX: Objection. Asked and answered.

24 A. I think I've already answered that my

1 numbers in Report No. 1 are irrelevant.

2 Q. (By Mr. O'Neil) Okay. Let's talk about
3 your first method of replacement cost. What's your
4 basis for using replacement cost to measure unjust
5 enrichment damages?

6 A. That's a starting value just to
7 illustrate to the -- the Court that PECO has in some
8 cases, as I cite here, indicated the value of its
9 pallets are \$20. And when they recover those
10 pallets from the marketplace, they assign a value of
11 \$20 per.

12 Q. Has -- has the academic community tested
13 the correctness of using replacement cost to measure
14 unjust enrichment damages, sir?

15 A. Not that I know of.

16 Q. Are there publications adopting the
17 replacement cost methodology for calculating unjust
18 enrichment damages that you're aware of?

19 A. Not that I'm aware of.

20 Q. Has an expert offered and had accepted
21 this methodology in any case in which you're aware
22 of, sir?

23 A. No.

24 Q. You came up with this methodology

1 entirely on your own; right, sir?

2 A. I'm not sure that that's correct. The
3 replacement cost was mentioned in a previous case,
4 and it's logical because PECO employees are using
5 the replacement cost to reflect the value of pallets
6 brought back into their system.

7 Q. I'm -- I'm referring to the -- the
8 concept of using replacement cost to calculate
9 unjust enrichment damages. You're not aware of --
10 of any other expert using that methodology, are you,
11 sir?

12 A. That's correct.

13 Q. And you're unaware of any Court in any
14 state or -- or federal courthouse in the
15 United States that has accepted replacement cost as
16 a measure of unjust enrichment damages; right, sir?

17 MR. WIX: Objection. Foundation.

18 A. I didn't look for any though.

19 Q. (By Mr. O'Neil) And let's talk about the
20 repair versus replace calculation in -- in line 2.
21 Has the academic community tested the correctness of
22 this methodology for measuring unjust enrichment
23 damages?

24 A. Not that I know of.

1 MR. WIX: Objection. Foundation.

2 (Court reporter clarification.)

3 MR. WIX: Foundation.

4 Q. (By Mr. O'Neil) And has the repair
5 versus replace methodology been accepted by the
6 academic community study in the pallet industry as
7 a -- as an appropriate measure of damages in an
8 unjust enrichment claim?

9 A. Not that I know of.

10 Q. And are you aware of any expert that's
11 offered and had accepted the repair versus replace
12 methodology in an unjust enrichment case?

13 A. No.

14 Q. And are you aware of any courts which
15 have -- have used the repair versus replace
16 methodology in measuring unjust enrichment damages?

17 A. No.

18 Q. Let's go to the third line, book value.
19 Has the academic community tested the
20 correctness of using book value for unjust
21 enrichment damages in litigation?

22 A. Not that I know of.

23 Q. And are you aware of any publications
24 that have used the book value methodology to

1 calculate unjust enrichment damages?

2 A. No.

3 Q. Are you aware of any expert who's offered
4 and had accepted the book value methodology for
5 calculating unjust enrichment damages?

6 A. No.

7 Q. And are you aware of any Court that's
8 adopted the book value methodology in calculating
9 unjust enrichment damages?

10 A. No.

11 Q. Let's go to revenue per pallet.
12 Are you aware of any academic community
13 literature that's tested the correctness of the
14 revenue per pallet methodology for calculating
15 unjust enrichment damages?

16 A. No.

17 Q. And has the revenue per pallet
18 methodology for calculating unjust enrichment
19 damages been accepted by the academic community?

20 MR. WIX: Objection. Foundation.

21 A. Not that I know of.

22 Q. (By Mr. O'Neil) Are there any
23 publications that you're aware of that have accepted
24 the revenue per pallet methodology to calculate

1 unjust enrichment damages?

2 A. If I may call the decision from the
3 Mock case a publication, then I'll say that was
4 considered by the Court.

5 Q. Are you aware of any expert that's
6 offered and had accepted the revenue per pallet
7 methodology in an unjust enrichment case?

8 A. No.

9 Q. Okay. Let's go to the fifth methodology,
10 the annual earnings per pallet.

11 Are you aware of any academic literature
12 which has tested the correctness of this methodology
13 for measuring unjust enrichment damages?

14 A. No.

15 Q. And has this methodology been accepted by
16 any academic study in the pallet industry, to your
17 knowledge?

18 A. No.

19 Q. Are you aware of any publications
20 adopting the annual earnings per pallet as a measure
21 of unjust enrichment damages?

22 A. No.

23 Q. Are you aware of any expert who's offered
24 and had accepted this methodology of measuring

1 unjust enrichment damages?

2 A. No.

3 Q. Are you aware of any Court which has
4 accepted the annual earnings per pallet as a measure
5 of unjust enrichment damages?

6 A. Partially.

7 Q. And that's a reference to the Mock Pallet
8 case?

9 A. Correct.

10 Q. Okay. Last one is lost pallet fees. Has
11 the academic community tested the correctness of the
12 lost pallet fee methodology for calculating unjust
13 enrichment damages?

14 A. No.

15 MR. WIX: Objection. Foundation.

16 Q. (By Mr. O'Neil) Has the lost pallet fees
17 methodology for calculating unjust enrichment
18 damages been tested in any peer-reviewed
19 publications that you're aware of?

20 A. No.

21 Q. Are you aware of any expert who's offered
22 and had accepted the lost pallet fee methodology for
23 calculating unjust enrichment damages, to your
24 knowledge?

1 A. Let me provide the example that the CHEP
2 financial analyst used lost pallet fees in that
3 judgment that was relied on by the Court, if I
4 recall correctly.

5 Q. Was that an expert witness?

6 A. I'm not sure how he was called.

7 Q. As far as you know, Dr. Michael, this
8 Court that's trying this case in which we're sitting
9 for your deposition today would be the first court
10 in the history of the United States jurisprudence to
11 accept any of these six methodologies for
12 calculating unjust enrichment damages; isn't that
13 true?

14 MR. WIX: Objection. Foundation. Legal
15 conclusion.

16 A. I don't know that one way or the other.

17 MR. WIX: This may be a good time, Bill?

18 MR. O'NEIL: Perfect.

19 MR. WIX: All right. Hate to break up the
20 party, but I gotta be out in the suburbs.

21 THE VIDEOGRAPHER: It is 5:44 P.M. We are off
22 the record.

23 (WHEREUPON, the deposition was
24 adjourned until 8:00 A.M.,

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4
5 I, ELIA E. CARRIÓN, CSR, RPR, CRR, a
6 Certified Shorthand Reporter of said state, do
7 hereby certify:

8
9 That previous to the commencement of the
10 examination of the witness, the witness was sworn to
11 testify the whole truth concerning the matters
12 herein;

13
14 That the foregoing deposition transcript
15 was reported stenographically by me, was thereafter
16 reduced to typewriting under my personal direction
17 and constitutes a true record of the testimony given
18 and the proceedings had;

19
20 That the said deposition was taken before
21 me at the time and place specified;

22
23 That I am not a relative or employee or
24 attorney or counsel, nor a relative or employee of

1 such attorney or counsel for any of the parties
2 hereto, nor interested directly or indirectly in the
3 outcome of this action;

4
5 IN WITNESS WHEREOF, I do hereunto set my
6 hand of office at Chicago, Illinois, this 3rd day of
7 May, 2018.

8
9
10 C.S.R. Certificate No. 084.004641.

PECO PALLET, INC.,)
Plaintiff,) Case No.
vs.) 1:15-cv-06811
NORTHWEST PALLET SUPPLY CO.,)
Defendant.)

NORTHWEST PALLET SUPPLY CO.,)
Plaintiff,) Case No.
vs.) 3:15-cv-50182
PECO PALLET, INC.,)
Defendant.)

Friday, April 27, 2018

Job No. 21448

1 that the number really is something other than 28 to
2 31 cents. You just have a different way of -- of
3 looking at the issue; right?

4 A. I would agree with the first part. I'm
5 not sure that I have a thought on the second part of
6 your statement in terms of I disagree with that.

7 Q. Okay. Let me ask -- ask you a better
8 question.

9 You -- you don't have any opinion that
10 PECO has incorrectly calculated the average
11 network-wide recovery rate as 28 to 31 cents;
12 correct?

13 A. Correct.

14 Q. Okay. It -- let's look at your rebuttal
15 report, Exhibit 27, paragraph 20(b) on page 6. You
16 say: PECO may provide incentives to PDs -- capital
17 P, capital D, little s -- that, in effect, increase
18 the compensation retailers are receiving for
19 returning PECO assets. Do you see that?

20 A. Yes.

21 Q. Sir, are you aware of any specific
22 incentives between PECO and any particular
23 participating distributor?

24 A. Other than the footnote that I have

REPORTER'S CERTIFICATION

I, ELIA E. CARRIÓN, CSR, RPR, CRR, a
Certified Shorthand Reporter in and for the state of
Illinois, do hereby certify:

That the foregoing witness was by me duly
sworn; that the deposition was then taken before me
at the time and place herein set forth; that the
testimony and proceedings were reported
stenographically by me and later transcribed into
typewriting under my direction; that the foregoing
is a true record of the testimony and proceedings
taken at that time.

That before the conclusion of the
deposition, the witness has requested a review of
this transcript pursuant to Rule 30(e)(1).

IN WITNESS WHEREOF, I do hereunto set my
hand of office at Chicago, Illinois, this 4th day of
May, 2018.

C.S.R. Certificate No. 084.004641.